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PEOPLES argument misses the mark. Even assuming, arguendo, that PEOPLES was within its rights to reject the decentralization plan proposed by TRIAD, it still had a statutorily mandated public duty to deal in good faith with TRIAD with regard to this decentralization issue. 83 IL Admin. 500.170. The utility failed and refused to come out to the premises for a period of six months. PEOPLES argues in Paragraph 25 of its "Motion to Strike" that it need not provide TRIAD with a legal brief on the matter, as everyone is presumed to know the law. However clever this may initially sound, the argument still fails to address PEOPLES' failure to deal in good faith with TRIAD, in violation of 83 IL Admin. 500.170. PEOPLES knew what TRIAD wanted to do and also knew how it could be accomplished within its interpretation of the administrative guidelines and utility tariffs. However, because it failed and refused to cooperate with its customer, TRIAD has incurred substantial utility bills and has been placed in a severe financial bind. This was a direct and proximate result of PEOPLES' poor billing practices, its failure to take actual gas readings on a monthly basis, and the resultant inability of TRIAD to accurately predict how much each month's gas bill will be. Couple this with the necessity and added expense of retaining legal counsel in order to resolve this issue, as well the underlying billing dispute, and one can see how quickly the consequential damages arising out of the utility's failure to deal in good faith with TRIAD mount. As this violation was willful, TRIAD is entitled to an award of both compensatory and punitive damages, as well as an award of reasonable attorneys' fees, in accordance with 220 ILCS 5/5-201.

For these reasons, and for those which follow, PEOPLES' "Motion to Strike" must be denied.

II. PEOPLES VIOLATED ITS STATUTORY DUTY TO DEAL IN GOOD FAITH WITH TRIAD

A. PEOPLES' REPEATED FAILURE TO RESPOND

As set forth in its "First Amended Complaint," TRIAD approached PEOPLES numerous times in an effort to decentralize its Parkside property.

The first request was by means of a telephone inquiry made by TRIAD to PEOPLES on or about January 19, 2001. This request was ignored. 83 IL Admin. 500.170 provides, in pertinent part: "Meters shall be located on the customer's premises as near as practical to the point of entrance of gas service into customer's building or utilization area as mutually agreed upon by the utility and customer" (emphasis added). If TRIAD made no further request, this initial failure to respond by PEOPLES would be sufficient to constitute a violation of this administrative code provision. But TRIAD did make further inquiry, also to no avail.

After two weeks of silence by PEOPLES, TRIAD place a second telephone call to the utility on or about February 7, 2001. This request, like the first, was simply ignored. One failure to respond would be sufficient to find a willful refusal of the utility to honor the provisions of 83 IL Admin. 500.170. If PEOPLES' first failure to respond was not sufficient to establish a code violation, certainly its second failure to even return a telephone call should suffice.

Significantly, these requests followed TRIAD's receipt on or about December 19, 2000, of a "make-up" bill for the period extending back more than two years which demanded payment of approximately twelve thousand dollars in allegedly unbilled service. See "First Amended Complaint," Paragraph 22 (estimated gas bills from 8/28/98 - 11/15/00, which totaled \$18,362.40, were then revised upward the following month, to \$30,395.96). As a direct and proximate result of PEOPLES' failure to take actual readings in accordance with the applicable provisions of the Illinois Administrative Code, TRIAD suffered severe financial hardship, having to come up with

\$5,000.00 immediately -- on or about January 5, 2001 -- in order to pay down the arrearage caused by PEOPLES' illegal billing practices. See "First Amended Complaint," Paragraph 23. TRIAD's attempts to have the utility review this "make-up" bill were similarly ignored for a period of eight months. See "First Amended Complaint," Paragraph 23.

Incredible as it may seem, PEOPLES immediately resumed its practice of estimating bills. This time, however, it would result in a later increase of nearly threefold. See "First Amended Complaint," Paragraphs 25 - 27 (estimated gas bills from 12/14/00 - 5/16/01 totaled \$5,093.47, then were revised upward, to \$14,777.74).

It is against this backdrop, and it is within this context, that PEOPLES' refusal to even address TRIAD's request for decentralization must be examined. TRIAD simply could not run its business and manage its building without having some reasonable idea of what its utility bills would be from month to month. Allowing for a 15% deviation either way might be within the realm of reasonable certainty; wild fluctuations which result in a threefold increase over a six month period -- a 300% deviation -- is completely unacceptable.

Understandably, TRIAD wanted to put an end to these wildly fluctuating utility bills.

Nevertheless, PEOPLES refused to return TRIAD's telephone inquiries regarding decentralization. These failures to even discuss the location of meters violated the letter and the spirit of 83 IL Admin. 500.170.

On or about April 2, 2001, TRIAD put its request in writing. It took PEOPLES two and a half months to come out to the building and see what its customer was proposing. This occurred on or about June 15, 2001. See "First Amended Complaint," Paragraph 40. However, not only did PEOPLES fail to come to a mutual agreement with TRIAD as to the location of meters, in violation of 83 IL Admin. 500.170, it denied TRIAD's request without explanation and without offering any alternate decentralization plan for TRIAD's review and consideration.

See "First Amended Complaint," Paragraphs 40 - 49. TRIAD's request for a written explanation as to why its proposed decentralization plan was unacceptable to the utility was similarly denied. See "First Amended Complaint," Paragraph 50. All of this was memorialized in a letter from TRIAD to PEOPLES dated August 28, 2001. See "First Amended Complaint," Paragraph 40, and "Exhibit F."

TRIAD would eventually have to hire, at great expense, legal counsel in order to file a formal complaint with the Illinois Industrial Commission before representatives from the utility would agree to meet and discuss this decentralization issue with TRIAD. This was finally accomplished only recently, on or about September 24, 2002. Although the parties remain at an impasse regarding the location of meters, at the very least PEOPLES has finally been forced to address the issue.

But at what cost? And who should be made to bear that cost?

It should be clear by now that PEOPLES' obdurate behavior has cost TRIAD time, aggravation, and money. And although some progress has been made, this decentralization issue is still unresolved.

B. PEOPLES REJECTION DID VIOLATE 83 IL Admin. 500.170

PEOPLES would have the issue framed as follows: "Peoples Gas rejection of the decentralization plan did not violate the 83 Ill. Admin. Code § 500.170(a) or Rider 5. See "Motion to Strike," Paragraph 20. Whether PEOPLES' eventual rejection of TRIAD's decentralization proposal was in accordance with the utility's tariffs is really beside the point. PEOPLES' failure to even address the issue for a period in excess of six months in and of itself constitutes a violation of Section 170's mandate that the utility deal in good faith with its customer. Similarly, PEOPLES' failure to suggest an alternate proposal constitutes a further

violation of the utility's duty under Section 170 to deal in good faith with its customer.

Even if, arguendo, PEOPLES was within its rights to reject TRIAD's decentralization plan, it still failed to reach an agreement with TRIAD over the location of meters, in violation of 83 IL Admin. 500.170. Taking all well-pleaded allegations as true for the purposes of this motion, it is clear that PEOPLES did, in fact, willfully violate its statutory duty of good faith dealing between a utility and its customer when it came to the placement of meters on TRIAD's premises and other issues. That administrative code section, 83 IL Admin. Part 500, is entitled "Standards of Service for Gas Utilities" and Section 170 of Part 500 is entitled "Location of Service Meters." That section provides as follows:

Section 500.170 Location of Service Meters

a) Meters shall be located on the customer's premises as near as practical to the point of entrance of gas service into customer's building or utilization area as mutually agreed upon by the utility and customer. Said location shall be accessible and provide reasonable protection for the meter from accidental damage or hazardous operation. Meters shall not be installed in sleeping rooms, small unventilated areas or in locations where the installation, reading and removal of the meter may prove difficult or hazardous. Out-of-doors meters may not be installed in front of a residential dwelling except with the consent of the customer.

83 IL Admin. 500.170 (emphasis added).

However, as it will be shown below, PEOPLES was not within its rights to reject TRIAD's decentralization plan.

PEOPLES argues that when this section is read together with Rider 5 of its tariff, no meter can be installed more than ten feet inside the building from the point where the service pipe enters the building.

The fact is, PEOPLES was not within its rights to reject TRIAD's decentralization plan. First of all, the current meter placement certainly exceeds this ten foot limitation. To the extent PEOPLES raises this as an issue, at least with respect to this building, the issue has been waived.

Secondly, 83 IL Admin. 500.170(a) speaks in terms of the meters being located “as near as practical to the point of entrance of gas service into customer’s building or utilization area as mutually agreed upon by the utility and customer.” TRIAD’s decentralization proposal called for individual meters to be placed outside each individual apartment unit so that each individual unit could be individually metered and billed accordingly. The utility “customer” would no longer be TRIAD, it would be the individual tenant residing in the apartment. As such, the tenant “customer” obviously would not own a “building,” as that term appears in section 170. Rather, the tenant “customer” would reside in an apartment unit, or “utilization area,” as that term is used in 83 IL Admin. 500.170(a). Moreover, the meters would be located on the exterior wall of each “utilization area,” which, if the meters are to be read from the outside, constitutes a location “as near as practical to the point of entrance of gas service into customer’s ... utilization area,” in accordance with the provisions of 83 IL Admin. 500.170(a).

Section 170 (a) provides that both the utility and the customer shall mutually agree upon the location of gas meters on the customer’s premises. As such, this section imposes a duty of good faith upon both parties to resolve any dispute regarding location of the meters in an amicable fashion. Taking all well-pleaded allegations as true for the purposes of this motion, it is clear that PEOPLES failed and refused to act in good faith when it came to this issue. As a result of PEOPLES’ obdurate behavior, TRIAD’s premises remain to this day without individual meters for each unit. This fact, coupled with PEOPLES’ failure to take actual meter readings on a monthly basis, has made it impossible for TRIAD to appropriately budget for its gas usage and recoup the same from its tenants.

For all of the foregoing reasons, PEOPLES should be ordered by this Honorable Commission to approve TRIAD’s decentralization plan and install the individual meters at the utility’s expense.

C. TRIAD IS ENTITLED TO AN AWARD OF MONETARY DAMAGES

Finally, PEOPLES contends that this Honorable Commission is without power to award TRIAD an amount of monetary damages, including an award of reasonable attorney's fees, as a result of PEOPLES' willful failure to deal in good faith on this issue. However, the Illinois Code of Civil Procedure does provide for the recovery of monetary damages against a public utility for violation of any provision of the Public Utility Act or "any rule, regulation, order or decision of the Commission." 220 ILCS 5-201. TRIAD is under a duty to exhaust its administrative remedies. Accordingly, in the interest of judicial economy, TRIAD respectfully requests this Honorable Commission to direct PEOPLES to decentralize TRIAD's premises and award TRIAD an amount of compensatory damages arising out of PEOPLE's failure to act in good faith, in violation of 83 IL Admin. 500.170.

TRIAD further seeks a finding from this Honorable Commission that PEOPLES's refusal to act in good faith on this decentralization issue was willful. As such, TRIAD seeks an award of compensatory and punitive damages, as well as an award of reasonable attorney's fees pursuant to 220 ILCS 5-201, which provides as follows:

In case any public utility shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done either by any provisions of this Act or any rule, regulation, order or decision of the Commission, issued under authority of this Act, the public utility shall be liable to the persons or corporations affected thereby for all loss, damages or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was willful, the court may in addition to the actual damages, award damages for the sake of example and by the way of punishment. An action to recover for such loss, damage or injury may be brought in the circuit court by any person or corporation.

In every case of a recovery of damages by any person or corporation under the provisions of this Section, the plaintiff shall be entitled to a reasonable attorney's fee to be fixed by the court, which fee shall be taxed and collected as part of the costs in the case.


No recovery as in this Section provided shall in any manner affect a recovery by the State of the penalties in this Act provided.

220 ILCS 5-201 (emphasis added).

III. CONCLUSION

Taking all allegations to be true for the purposes of this motion, and viewing these facts in the light most favorable to TRIAD, PEOPLES' "Motion to Strike" must be denied.

Respectfully Submitted,
TRIAD MANAGEMENT, INC.

BY: 
One of Complainant's Attorneys

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**IN PROCEEDINGS BEFORE
THE ILLINOIS COMMERCE COMMISSION**

TRIAD MANAGEMENT, INC.,
an Illinois corporation,

Complainant,

v.

PEOPLES GAS LIGHT AND COKE CO.,
an Illinois corporation,

Respondent.

Case No. 02-0066

NOTICE OF FILING

To: **Peoples Energy Office of Legal Counsel**
130 E. Randolph Dr., 23 FL.
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Administrative Law Judge Terrance Hilliard
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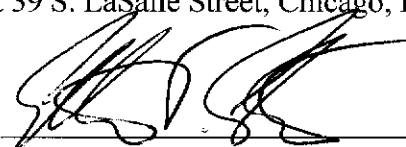
Please take notice that on October 28, 2002, the undersigned delivered for filing via UPS Overnight Delivery Complainant's "Response to Motion to Strike," a true and correct copy of which is attached hereto and is hereby served upon you.



Stephen T. Saporta

CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 735 ILCS 5/1-109 that he served a true and correct copy of this "Notice of Filing" together with Complainant's "Response to Motion to Strike," by placing the same in a sealed envelope, properly addressed to the parties set forth above, with proper first class postage prepaid, and placing the same in the U.S. Mail at 39 S. LaSalle Street, Chicago, Illinois 60603 on or before 5:00 p.m. on October 28, 2002.



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